Big Rivers Electric Corporation *and* Gale Rae Melton

International Brotherhood of Electrical Workers, Local 1701, a/w International Brotherhood of Electrical Workers, AFL-CIO *and* Gale Rae Melton. Cases 25-CA-11758 and 25-CB-4054

February 19, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 19, 1980, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent Employer and the Respondent Union filed answering briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

We agree with the Administrative Law Judge that the Respondent Union did not violate Section 8(b)(1)(A) and 8(b)(2) of the Act as alleged in the complaint. In so doing, however, we find it unnecessary to rely on his conclusion that the Union's September 26 letter to the Employer could not be construed as a demand to discharge the Charging Party for failing to meet her union obligation. Assuming, *arguendo*, that the letter did constitute such a demand, we find that in any event the Charging Party had sufficient notice of her dues obligation, and that the Union did not in any other manner breach its fiduciary obligation to her.

As noted by the Administrative Law Judge, a union's duties prior to seeking a discharge for a failure to pay dues or fees include informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the fact that discharge will result from failure to pay. See *Philadelphia Sheraton Corporation*, 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir. 1963). While the Administrative Law Judge did not clearly delineate where and how each factor was made known to Melton, we find that the Union carried out its fiduciary obligation through oral communication to Melton by Union Vice Chairman James M. Askins and Stewards James K. Alsip and Walter McGeehee (employees generally credited by the Administrative Law Judge), and by the September 1 union letter that Melton's grandmother received on her behalf but which Melton apparently avoided receiving. We also note that Melton was informed of the amount of dues owing by fellow employee Beatrice Blanks, whom she consulted instead of a union representative, before allegedly mailing in her dues check.

Moreover, assuming *arguendo* that the Union did not fully comply with its fiduciary obligation, the Board never intended these requirements "to be so rigidly applied as to permit a recalcitrant employee to profit from his own dereliction in complying with his obligations as a union member . . . ." *Produce, Refrigerated & Processed Foods & Industrial Workers Local No. 630, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ralph's Grocery Company)*, 209 NLRB 117, 124 (1974). Based on the Administrative Law Judge's recitation of the facts, particularly his finding that Melton failed to make any effort to meet her obligations for some 8 months after her hire and after repeated warnings about the consequences of failing to do so, we find that any infirmity in the Union's formal notice to Melton of her dues obligation was excused by her own recalcitrant attitude in fulfilling that obligation. See, e.g., *Produce, Refrigerated & Processed Foods, supra* at 125, fn. 19.

In adopting the Administrative Law Judge's finding that the Respondent Employer did not discharge Melton in violation of Section 8(a)(3) of the Act, we reject the General Counsel's assertion that *Forsyth Hardwood Company*, 243 NLRB 1039 (1979), is factually undistinguishable and requires the finding of a violation here. In *Forsyth*, an employer, pursuant to a union's request, started the process for discharging an employee who was delinquent in dues. Before that process was completed, however, the employee cleared the delinquency and notified the employer of this fact. The employer did not seek to determine the truth of the employee's assertion, even though the union also intervened in the employee's behalf, but instead completed the discharge process. The Board found the discharge a violation of Section 8(a)(3) since it found that, before the discharge process had been completed, the employer had been given reasonable grounds to believe the union's discharge request was no longer proper; nevertheless the em-

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

ployer did not investigate but simply completed the termination process. Here, by contrast, the termination process was completed on October 16, 1979, the day *before* Melton presented her dues receipt to the Respondent Employer. Thus, as found by the Administrative Law Judge, Melton was specifically advised when she was suspended on Thursday, October 11, by Plant Superintendent Wallace that she had up to 3 working days to obtain evidence of her compliance with the union-security provision of the contract by bringing in a dues receipt from the Union. Thus, when she returned to the Respondent Employer on Wednesday, October 17, with proof of her union membership, the Employer's discharge process had already been completed, as further evidenced by the termination letter dated October 16 which was immediately handed to her.

Finally, we reject the General Counsel's contention that the Respondent Employer's suspension of Melton constituted an additional 8(a)(3) violation. As indicated above, we conclude that the Respondent Union by its September 26, 1979, letter lawfully called upon the Respondent Employer to take action against the Charging Party under the applicable union-security provision. Since the Respondent Employer was privileged to terminate the Charging Party pursuant to the Union's letter, we fail to see how it can be held to have violated Section 8(a)(3) of the Act merely because it voluntarily extended a brief grace period in which she was to meet her obligation.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This proceeding was heard in Evansville, Indiana, on July 29, 1980, on an initial unfair labor practice charge filed on January 21, 1980, and on separate complaints, consolidated by order dated July 21, 1980, alleging that Respondent Union violated Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, as amended, herein called the Act by attempting to cause and causing the discharge of Gale Rae Melton under a union-security clause in breach of its fiduciary obligations, and further that Respondent Employer violated Section 8(a)(3) and (1) of the Act by discharging Melton upon the Union's request. In their answers, Respondent Union and Respondent Employer, respectively, denied that any unfair labor practices were committed. Following close of the hearing, briefs were filed on behalf of the General Counsel, Respondent Employer, and Respondent Union.

Based on the entire record in this proceeding, including my opportunity directly to observe the witnesses and their demeanor while testifying, and after due consideration of the post-hearing briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Respondent Employer is a Kentucky corporation with a principal office and place of business in Henderson, Kentucky, as well as a generating station in Sebree, Kentucky, from which it is engaged in the operation of a public utility for the generation, transmission, and sale of electric power. During the calendar year ending December 31, 1979, Respondent Employer derived gross revenues exceeding $250,000 from said operations and sold and shipped from its Henderson, Kentucky, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Kentucky, while receiving at said facility goods and materials valued in excess of $50,000 shipped directly from points outside the State of Kentucky.

The complaints allege, the answers admit, and I find that Respondent Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaints allege, the answers admit, and I find that International Brotherhood of Electrical Workers, Local 1701, a/w International Brotherhood of Electrical Workers, AFL-CIO, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

This proceeding is concerned solely with unfair labor practice allegations emerging from the Employer's action, following request of the Union, in discharging employee Gale Rae Melton under a lawful union-security clause in the governing collective-bargaining agreement.

The Union was certified initially as representative of employees at the Big Rivers facilities in 1975. All told, the Union represents 650 employees, some 350 of whom are within the unit at Big Rivers. The first collective-bargaining agreement negotiated in said unit was devoid of any form of union security. However, that agreement was succeeded by a contract executed on September 18, 1977, with a scheduled expiration date of March 17, 1981. The latter included a modified union-shop clause, but was devoid of checkoff provisions, thereby requiring those obliged to join to pay their dues in person at the union hall or through the mail.[1] The union-security provision in effect under that contract in pertinent part provided as follows:

[1] Union representatives in the plant were not authorized to receive such payments.

> All new employees coming under this agreement joining the company after September 18, 1977, shall arrange with the Union for membership therein after the 30th day of employment as a condition of employment.

Melton was hired on January 17, 1979,[2] and assigned to the Reid station. At that time, Melton admits to having been informed by Personnel Director Tom Millay that a procedure existed for paying union initiation fees and dues. She further concedes that she at the time was given a copy of the subsisting collective-bargaining agreement. Also admitted by Melton was the fact that, on assignment to her duty station, her supervisor, Gary Railey, referred to her obligation to pay union fees.[3]

By virtue of the contract, Melton's obligation to join the Union matured in late February 1979. It is undisputed that, for some 8 months thereafter and until October 1979, Melton took no steps to "arrange with the Union for membership therein," and during that period was employed in noncompliance with the union-shop provision of the existing contract.[4] Melton explained her inaction in that regard by making reference to her assertion that her supervisor and the personnel director told her at the time of hire that she would be approached by the Union, while adding: "If I'm to join the Union, I feel that they want money and my dues . . . its their obligation to come to me." However, it is clear from the record that the Union did approach Melton. She admits that, during the aforesaid period, in either March or April, Martin Askins, the Union's vice chairman, and an employee assigned to the Reid station, inquired as to whether she had joined the Union.[5] I also find that Melton participated in similar conversations with Union Stewards James Alsip and Walter McGeehee.[6]

Despite Melton's ongoing noncompliance, formal action by the Union to enforce the union-security clause first occurred on September 1. On that date, Harold Baggett, the Union's business manager, wrote Melton as follows:

> Gale R. Melton
> General Delivery
> Sebree, KY 42455
>
> Dear Employee:
>
> We call your attention to Paragraph 9(b) of our Big Rivers' Agreement, which requires all new employees to join the union after thirty (30) days of employment. I have been informed by Pat Waldeck, Martin Askins, Wayne Harley, and the Big Rivers' office that they have called this to your attention.
>
> According to our records you were employed on *1/17/79* and have had sufficient time to comply with this section of our Agreement.
>
> You are now officially notified that we expect you to join Local 1710 by 9/15/79.
>
> Yours truly,
>
> Wm. Harold Baggett, Bus. Mgr.

Parenthetically, it is noted that Melton denied ever having received a copy of that letter or having ever been informed as to its content. The letter, forwarded by certified mail, was addressed to Melton at the home of her grandmother. A return receipt in evidence, dated September 12, 1979, bears the signature of Melton's grandmother. Melton, in June 1979, had moved from that location to Owensboro, Kentucky, informing the Company in writing of her change of address. There is no evidence, however, that this change was transcommunicated to the Union, and I find that insofar as the Union was concerned, the address in Sebree, Kentucky, was Melton's last known address. Notwithstanding Melton's denials in this respect, she in fact was aware of the existence of the letter. For she admits that in mid-September her grandmother, by telephone, informed her that she had received a letter "from the Union." According to Melton, in that conversation, her grandmother did not possess the letter and, as it had not been opened, the latter could neither read nor tell Melton what it concerned.[7]

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[2] Unless otherwise indicated all dates refer to 1979.

[3] Melton's testimony concerning the orientation by Millay and Railey was not believed in other respects. Contrary to the implication arising from her account of these conversations, I credit Railey and Millay and find that she was told that union membership was a condition of employment. Further, while she may have been told that she would be contacted by a union representative, contrary to the implication arising from her testimony, I do not believe that such a reference was communicated in terms excusing Melton from herself taking the initiative. Melton was an incredible witness. She impressed me as an individual of above average intelligence. Yet, her overall story was laced with admissions of irresponsible conduct, which often she attempted to explain away through a barrage of unbelievable excuses. I also perceived a tendency in Melton to tailor, in improbable fashion, accounts of conversations so as to further her interest in this proceeding. As shall be seen, her testimony is rejected as unreliable unless corroborated through other credible sources.

[4] In addition to Respondent Employer's orientation practices, the effort to educate the work force of their union obligations was furthered in the spring of 1979 when William James, Respondent Employer's vice general manager, directed department heads, including Stan Wallace, the plant superintendent of the Reid station, where Melton was assigned, to post a union notice on the bulletin board which reminded employees of their contractual obligations with respect to the Union, and pointed out, *inter alia*, as follows:

> Any and all members that are not complying with the above sections are placing their jobs in jeopardy.

Relevant sections of the IBEW constitution were also covered by the posting. See Resp. Emp. Exh. 5.

[5] According to Melton, this was the only contact she could recall from an employee representative of the Union concerning her membership obligation. As indicated, Melton was not a reliable witness. Throughout her testimony she manifested a limited capacity for recollection with respect to many matters having an adverse effect upon her cause. In this respect, I prefer the testimony of Askins that a month or two after the hire of Melton, he told her that she was required to join the Union within the time limits set by the contract.

[6] Melton could not recall these conversations. I credit the testimony of James Alsip, a union steward on Melton's shift, that he informed her of the membership obligation approximately 3 months after her hire, and that another steward, Walter McGeehee, in Alsip's presence, told Melton that if she did not fulfill her membership obligation she would be terminated.

[7] Although Melton testified that she visited her parents' home in Evansville, Indiana, every weekend, and at that time picked up her mail forwarded by her grandmother, for unexplained reasons the Union's letter was never delivered to her in that fashion. When questioned as to why she had not directed her grandmother to forward the letter to her, Melton simply testified that "it slipped my mind."

That Melton at least suspected what that letter was about is suggested by her testimony that she happened to mention the letter to fellow employee Beatrice Blanks. By coincidence, the record, in other areas, reveals that Blanks had been exposed to repeated prodding by the Union to comply with her own union obligations. Thus, documentary evidence indicates that on January 29, 1979, Blanks was sent a letter by the Union identical to that addressed to Melton, pertaining to Blanks' failure to join the Union after 30 days of employment.[8] In addition, on July 9, 1979, the Union requested that the Company post a list of members in arrears on their dues obligation, which included Beatrice Blanks. It is also noteworthy in this regard that, according to the testimony of Melton, when she sought information as to the amount of dues owed, she did not direct her inquiry to any representative of the Union but sought and received such information from Beatrice Blanks.

In any event, the Union, having received no response from Melton, by letter dated September 26, 1979, wrote Vice General Manager James as follows:

> Dear Bill:
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> Enclosed is a copy of a notification that was sent to Gale R. Melton by registered mail. You will also note this was signed for on September 12, 1979.
>
> As you can see this employee has had ample time to comply with Paragraph 9(b) of our Big Rivers Agreement. Therefore, we officially request that you take immediate action regarding this matter.
>
> Sincerely,
>
> Wm. Harold Baggett, Bus. Mgr.

Upon receipt of the foregoing, the Company became involved in the effort to obtain Melton's compliance with the Union's security provisions of the contract. However, no immediate disciplinary action was taken. Rather, on Friday, October 5, Supervisor Railey informed Melton that the Company received information from the Union that she had not met her membership obligations. According to his credited testimony, he again explained to her that becoming a member of the Union was a condition of employment and, at that point, he needed a verbal assurance from Melton that she would comply. The latter indicated that she would.[9]

Thereafter, on Monday, October 8, Melton approached Railey and told him she had mailed the Union a check for the amount she owed.[10]

During this entire period, Melton's deficiency had been the subject of ongoing discussion between the Union's business manager, Baggett, and Vice General Manager James. On Wednesday, October 10, in one such conversation, Baggett informed James that he had heard nothing from Melton. James indicated that he had received information that Melton had mailed a check to the Union on Monday. For this reason, Baggett and James agreed to wait a day or so longer. However, on the afternoon of Thursday, October 11, after the mail delivery that day, Baggett still had not received the check, and hence reported that fact to James.[11] Both agreed the matter had gone too far for too long and that something had to be done.

At this juncture, James instructed Plant Superintendent Wallace to implement a previously considered plan to bring Melton into compliance. That afternoon, still October 11, Melton was summoned to Wallace's office by Railey at approximately 2:30 p.m. Wallace informed Melton that as of Thursday the Union had still not received her check. Melton retorted that it had been mailed and should be there.[12] Wallace then indicated, "Well, you know, this thing is getting serious . . . you're going to have to make some different arrangements . . . this thing has to be paid."[13] Melton was told by Wallace that she would have to get a payment receipt from Baggett, and that she was going to be suspended beginning Friday, October 12, for a period of up to 3 days to obtain evidence of her compliance with the contract. Wallace counseled Melton as follows: "I strongly suggest that you get hold of Mr. Baggett as soon as you leave this office . . . make arrangements tonight to pay those dues and be to work in the morning . . . I see no reason for you to lose any time . . . to get this done."[14]

Based on the credited testimony of James, Wallace, and Railey, I find that the intent behind this suspension was to automatically discharge Melton if she were unable to furnish evidence of compliance with the union-security arrangement before expiration of 3 working days. Based on the credited testimony of Railey and Wallace, I find that such intent was communicated to Melton on October 11.

There can be no question that Melton was fully aware on October 11 that she had to appear in person at the union hall in order to satisfy the Company's mandate. Yet, from October 11 to October 17, it does not appear that she at any time inquired as to the business hours maintained by that facility.[15]

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[8] See Resp. Emp. Exh. 2(c).

[9] The foregoing is based essentially on a composite of testimony of Railey and Melton. Where in conflict, however, the testimony of Railey was preferred.

[10] Melton testified that she learned the amount of union dues from fellow employee Beatrice Blanks. She claims that she sought this information from Blanks because she could find no union steward at the time.

[11] According to the testimony of Melton, she did not deposit the envelope containing the check in a public mail receptacle. Instead, she left the envelope on top of her personal mail box at her apartment house. She expected the mailman to pick up the letter in making his deliveries, a practice followed in the past.

[12] Melton resides in Owensboro at a location only about 15 blocks from union headquarters.

[13] During the course of the conversation, Wallace suggested to Melton that she stop payment on the check.

[14] Here again, I prefer the testimony of Wallace, as corroborated by Railey, over that of Melton. The latter admitted she was told that she could return to work immediately upon obtaining evidence of compliance.

[15] Historically, the hours of operation at the union hall were Monday, Tuesday, Wednesday, and Friday, from 8 a.m. to 12 p.m., and from 1 p.m. to 4 p.m. on a daily basis. On Saturday, office hours were maintained from 8 a.m. to 12 p.m. The union hall was closed on Thursday and Sunday. Based on the credited testimony of Baggett, I find these hours were posted on the front door, through which persons normally having business gain access to the union hall. According to the testimony of Melton, and her friend, Mark Reisz, in their visits to the hall, neither observed any such posting.

And other evidence suggests that, notwithstanding the seriousness with which the suspension was communicated, Melton was by no means gripped by a sense of urgency. For during the entire period prior to October 17, her visits to the union hall numbered no more than two. Thus, on Friday, October 12, she made no attempt to venture to the union hall, located a mere 15 blocks or so from her home. She, thus, nullified the first opportunity to establish the predicate for curtailment of the suspension and immediate return to work, choosing instead to enjoy the day off by tending to personal affairs in Evansville, Indiana.[16] As for October 13, Melton denied knowledge that the Union maintained office hours on Saturday, and hence made no effort to go to the union hall that day.

With respect to Monday, October 15, according to the testimony of Melton, she made her first visit to the union hall, while allowing the morning to pass by, delaying until about 1 p.m. that afternoon to do so.[17] She, together with a friend, Mark Reisz, a former employee of the Company and union member, who allegedly accompanied Melton, testified that the door of the union hall was locked, that there were no cars on the parking lot, and that no one answered their repeated knocking on the door. According to Melton and Reisz, they waited a few minutes, and when no one appeared she returned home, adding that on her arrival, she attempted, for a period of about one-half hour, to reach the Union by telephone, repeatedly, but received no response. It is clear that she made no attempt to further communicate with the Union that day, claiming that she "figured" that she could take care of it the next day.

Tuesday, October 16, was the last day of her suspension. Despite the difficulties she claims to have encountered in her efforts to reach the Union previously, Melton, according to her own testimony, made no effort to communicate with the Union until 3:30 or 4 that afternoon.[18] She testified, with corroboration from Reisz, that she again went to union headquarters that day, finding the door locked, no cars, and no response to repeated knocking on the door. This time when, she returned home, Reisz telephoned Baggett in her behalf.[19] I discredit the testimony of Melton and Reisz to the effect that Baggett, after being informed that Melton had to report for work at 7 a.m. the next day, stated that "everything would be squared away" if she came in and paid her dues at 8 a.m. Wednesday morning[20]

On Wednesday, October 17, Melton went to the union hall shortly *after* 8 a.m., filled out a membership application, paid her initiation fees and dues, and obtained a receipt.[21]

From the union hall, Melton went directly to work, arriving sometime after 9 a.m. When she arrived she was stopped by the guard at the gate, who advised her that Wallace was waiting to see her. En route to Wallace's office, she was informed that Railey also wanted to talk to her. Because Wallace was on the phone, Melton first talked to Railey, showing him the receipt of payment from the Union and advising that she had squared away her responsibility and was a member. Raily indicated that it was too late, and pulled a letter of termination dated October 16, which recited as follows:

> Dear Miss Melton:
>
> On Thursday, October 11, 1979, you were called into my office in the presence of Gary Railey and notified again of your apparent unwillingness to comply with Section 9B of the Contract Agreement.
>
> I told you at this time you were suspended and given three scheduled working days to get in compliance and show me proof of said compliance. As of 3:30 p.m. this afternoon, Tuesday, October 16, 1979, your three days were up. Since you have not appeared, it leaves me no alternative but to terminate your employment with Big Rivers as I informed you on the before mentioned date.
>
> Your final check will be held pending your turning in all issued company-owned equipment and leased uniforms.
>
> Sincerely,
>
> S.R. Wallace
> Plant Superintendent

Following Melton's request for a union steward which was initially denied by Railey, Melton sought out and was accompanied by Union Steward Alsip to the office of Wallace. Alsip took the position that termination was unfair in her case inasmuch as Melton had a receipt of payment. Wallace disagreed. Melton explained that she went to the union hall on two successive days, only to find no one present. She argued that she telephoned Baggett at home and that he gave his approval that she report to the union hall on Wednesday, and pay her dues before going to work. Wallace indicated that he should have been contacted in advance that such an arrangement existed, whereupon Melton claimed to have attempted to reach the plant by telephone the previous evening while offering the excuse that she could not "get through." She claims that Wallace admitted the phones were not working on October 16, but she should have

[16] Melton did assert that she stopped payment on the check that day.

[17] It is noted that her estimated arrival time was perilously close to what is customarily regarded as the noon lunch hour.

[18] Reisz who allegedly again accompanied Melton on October 16 testified that their arrival was prior to 4 p.m. explaining that he would not have gone later, "Because common sense would have told me it wouldn't be open." It is no understatement to say that Melton was shaving it a bit close.

[19] Baggett acknowledged receiving said telephone call at or about 5:10 p.m. I credit his testimony that, after talking with Reisz, Melton, after explaining her situation, requested that he return to union headquarters, open the office, and allow her to pay her dues. Baggett told Melton that she would have to appear during normal business hours, and hence she would have to come in at 8 a.m. the next morning because he had no intention of returning to the office.

[20] Melton and Reisz testified that only Reisz talked to Baggett during the telephone conversation. Baggett testified that he first talked to Reisz and then Melton. The conflict is immaterial and need not be resolved.

[21] Considering the background, together with my mistrust of Melton, I discredit her testimony that on that occasion Baggett apologized for the "inconvenience" suffered by Melton and told her that "everything was taken care of, and to go back to work and carry on as normal." Although Baggett was not examined with respect to such comments, here again Melton's effort to present herself in a favorable light did not ring true.

found some other way to contact him. Melton claims that she then asked Wallace if it were not Baggett's role to contact Wallace. Alsip appealed to Wallace that Melton be given her job back, as there had been a breakdown in communications, which, according to Melton, Alsip stated was not Melton's fault. Alsip appealed to Wallace to let her go back to work. Wallace refused.

Following the discharge, the Union returned the union dues paid by Melton. The Union advised Melton that no grievance would lie on her discharge, but union representatives advised her to explore possible recourse through the National Labor Relations Board.

The question presented is whether on the above facts the Union and Employer exceeded permissible statutory limits in their efforts to enforce an employee's compliance with a lawful union-shop arrangement. There is neither claim, allegation, nor evidence that said action was based on considerations other than a continuing effort on the part of the Union's and Employer's representatives to secure satisfaction of Melton's legitimate, contractually defined membership obligations.[22]

With respect to the allegations against the Union, although some may argue that it is beyond the province of an administrative law judge to comment on the discretion exercised in issuing formal complaints under this Act, it is undeniable that an abuse of that authority entails a senseless waste of public and private resources and hardly enhances the mission of this Agency and its credibility. Here, if one limits the inquiry to documented evidence and that available through the Charging Party herself, it taxes the imagination to comprehend how trained experts under this Act could have preceived any illegality in the Union's conduct. The theory postulated by the General Counsel is that "the Union clearly failed in its fiduciary duty of informing Melton of her Union security obligations," by failing to notify Melton of the amount owed, the method used to compute the amount, when such payments are to be made, and that discharge would result from failure to pay. However, Melton, on her own testimony was mindful of these requirements and procedures at least as of October 8, some 9 days prior to her discharge, a period in which the Union was seeking her compliance, rather than discharge. Indeed the 8(b)(1)(A) and (2) violations imputed to the Union arise in a context in which the critical element of union caused or an attempt to cause discrimination is completely unsubstantiated. The only evidence bearing on that element is documented and in the form of the Union's letter to the Company of September 26, which merely requested that the Company "take immediate action" regarding Melton's failure to comply. Melton's own testimony indicates that, even after October 8, the Company afforded her reasonable opportunity to comply, with the Company affording Melton information to the effect that the Union during the ensuing period was concerned only with its failure to receive the check purportedly sent by Melton. Thus, on the face of her own testimony, it is obvious that Melton knew or should have known that the Union was not playing "hard ball" but supported management's continuing efforts to secure her compliance with legitimate membership obligations of which she was fully mindful.

However, resolution of the 8(b)(2) and 8(b)(1)(A) allegations is reduced to the simplistic when one takes account of the resolutions of credibility and the believable testimony as to the posture of the Union during the period between September 26 and October 17. It is obvious from the testimony of Baggett and James that, during that period, the stance of the Union was one of patient leniency and, like that of the Company, was aimed solely at obtaining Melton's compliance and not her separation. On the credited facts, the Union solicited the Company's assistance on September 26, and at no time thereafter sought discharge, electing instead to forbear during a substantial period of time during which the Company prodded Melton to join the Union and pay her membership fees. The 8(b)(1)(A) and 8(b)(2) allegations are dismissed.

The 8(a)(3) and (1) allegations are also untenable. The plight of Melton was not that of a union member who fell behind in dues, and who, suddenly, without prior warning, was discharged. On the credible evidence, Melton knew from the inception of her employment that she would be required to join the Union or be terminated.[23] Melton had knowingly been in default under what I find to have been an adequately published requirement for some 7 months before formal steps were taken to secure her compliance. Those efforts did not entail a swift discharge without notice, but involved action by union representatives and then by the Company to preserve her employment, but in conformity with the contract. The effort on the part of the management took the time and effort of at least one high level representative and two operating level supervisors of the Company. In the end, Melton was given 3 days off in order to obtain proof that she had fulfilled her membership obligations. She failed to honor the conditions communicated to her in timely fashion and she was discharged. One might say that perhaps management was unfair and that its leniency and patience could have been extended just one more step. But such a naked substitution of judgment for that of management is not only beyond the province of those responsible for administration of this Act, but in this instance would serve to reenforce conduct by an employee which on this record might be viewed as contumacy, at worst, or blatant irresponsibility at best. I find that the record does not substantiate that Respondent Employer discharged Melton for reasons other than her nonpayment of dues and initiation fees, and, accordingly, shall dismiss the 8(a)(3) and (1) allegations of the complaint.

CONCLUSIONS OF LAW

1. Big Rivers Electric Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[22] It is noted that Melton was the only employee discharged by reason of her failure to comply with the union-shop arrangement. However, credible evidence shows that other employees corrected their delinquencies immediately on the heels of formal prodding by the Union and the Company.

[23] Melton's testimony that she had no such knowledge is discredited.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Union did not violate Section 8(b)(1)(A) and (b)(2) of the Act by causing and attempting to cause the discharge of Gale Rae Melton, for reasons other than payment of initiation fees and dues pursuant to a lawful union-shop provision in the governing collective-bargaining agreement.

4. Respondent Employer did not violate Section 8(a)(3) and (1) of the Act by discharging Gale Rae Melton by reason of her nonpayment of initiation and fees and dues required by the terms of a lawful union-shop arrangement in the governing collective-bargaining agreement.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[24]

It is hereby ordered that the complaint herein be and it hereby is dismissed in its entirety.

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[24] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.